
By: ~~Delegates Guns and Pitkin, Pitkin, and Hubbard~~

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Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

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CHAPTER _____

1 AN ACT concerning

2 **Natural Resources - Transferable Development Rights - Rural Legacy**
3 **Program**

4 FOR the purpose of authorizing the Rural Legacy Board in the Department of
5 Natural Resources to transfer certain development rights from certain Rural
6 Legacy Areas to certain areas within a priority funding area in a certain
7 manner; authorizing that certain funds may be used for the purchase of certain
8 development rights in certain situations; providing that certain information be
9 contained in the instrument of purchase of certain development rights;
10 requiring counties to submit certain information to the Board for certain
11 purposes; providing that certain funds may be used to purchase transferable
12 development rights in a county under certain circumstances; prohibiting the
13 Rural Legacy Board from making a certain determination solely on the basis of
14 certain considerations; requiring the Economic Growth, Resource Protection,
15 and Planning Commission and the State Office of Planning to make a certain
16 report to certain committees of the General Assembly on or before a certain date;
17 restricting how transferable development rights may be resold through the
18 Rural Legacy Program; providing for the allocation of proceeds derived from the
19 transfer of development rights; ~~modifying a criteria for the Board to consider~~
20 ~~when evaluating the overall quality and completeness of a Rural Legacy Plan;~~
21 defining certain terms; providing for a delayed effective date; and generally
22 relating to the transfer of development rights from Rural Legacy Areas.

23 BY repealing and reenacting, with amendments,
24 Article - Natural Resources
25 Section 5-9A-01, 5-9A-02, 5-9A-04, and 5-9A-05
26 Annotated Code of Maryland

1 (1997 Replacement Volume and 1999 Supplement)

2 BY repealing and reenacting, without amendments,

3 Article - Natural Resources

4 Section 5-9A-03

5 Annotated Code of Maryland

6 (1997 Replacement Volume and 1999 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Natural Resources**

10 5-9A-01.

11 (a) The General Assembly declares that:

12 (1) Sprawl development and other modifications to the landscape in
13 Maryland continue at an alarming rate, consuming land rich in natural resource,
14 agricultural, and forestry value, adversely affecting water quality, wetlands and
15 habitat, threatening resource-based economies and cultural assets, and rending the
16 fabric of rural life;

17 (2) Current State, county, and local land conservation programs help to
18 limit the effect of sprawl development but lack sufficient funding and focus to
19 preserve key areas before escalating land values make their protection impossible or
20 the land is lost to development; and

21 (3) A grant program that leverages available funding, focuses on
22 preservation of strategic resources, including those resources threatened by sprawl
23 development, streamlines real property acquisition procedures to expedite land
24 preservation, TAKES ADVANTAGE OF INNOVATIVE PRESERVATION TECHNIQUES
25 SUCH AS TRANSFERABLE DEVELOPMENT RIGHTS AND THE PURCHASE OF
26 DEVELOPMENT RIGHTS, and promotes a greater level of natural and environmental
27 resources protection than is provided by existing efforts, will establish a rural legacy
28 for future generations.

29 (b) (1) A Rural Legacy Program is established to enhance natural resource,
30 agricultural, forestry, and environmental protection as provided in subsection (a) of
31 this section while maintaining the viability of resource-based land usage and proper
32 management of tillable and wooded areas through accepted agricultural and
33 silvicultural practices for farm production and timber harvests.

34 (2) The Program provides funds to the local governments and land trusts
35 to purchase interests in real property from willing sellers, including easements,
36 TRANSFERABLE DEVELOPMENT RIGHTS, and fee estates, focused in designated Rural
37 Legacy Areas.

1 (3) The Program shall encourage partnerships among the federal, State,
2 and local governments, and nonprofit land trust organizations and encourage local
3 land conservation initiatives.

4 (4) The Program is administered by a Rural Legacy Board in the
5 Department of Natural Resources, an advisory committee, and existing State staff.

6 (c) The Program is funded:

7 (1) Pursuant to § 13-209 of the Tax - Property Article and §
8 5-903(a)(2)(iii) of this article; and

9 (2) By the proceeds from the sale of general obligation bonds as provided
10 in § 5-9A-09 of this subtitle.

11 (d) When negotiating and awarding grants, the Board shall encourage
12 sponsors to utilize zero coupon bonds in the implementation of the Rural Legacy Plan
13 in order to reduce the utilization of general obligation bonds in funding the grants.

14 5-9A-02.

15 (a) In this subtitle the following words have the meanings indicated.

16 (b) "Application" means an application to the Rural Legacy Board to designate
17 a Rural Legacy Area.

18 (c) "Board" means the Rural Legacy Board.

19 (d) "BPW" means the Maryland State Board of Public Works.

20 ~~(E) "DEVELOPMENT RIGHT" MEANS A RIGHT TO CREATE A RESIDENTIAL~~
21 ~~BUILDING LOT OR CONSTRUCT A DWELLING UNIT IN ACCORDANCE WITH A LOCAL~~
22 ~~ZONING ORDINANCE OR OTHER IMPLEMENTING LAND USE ORDINANCE.~~

23 ~~{(e)}~~ ~~(F)~~ "Grant agreement" means an agreement between the Board and a
24 sponsor to implement a Rural Legacy Plan in a designated Rural Legacy Area.

25 ~~{(f)}~~ ~~(G)~~ "Land trust" means a qualified conservation organization that:

26 (1) Is a qualified organization under § 170(h)(3) of the Internal Revenue
27 Code and regulations adopted under § 170(h)(3); and

28 (2) Has executed a cooperative agreement with the Maryland
29 Environmental Trust.

30 ~~(H)~~ (G) "PRIORITY FUNDING AREA" MEANS AN AREA DESIGNATED AS A
31 PRIORITY FUNDING AREA UNDER § 5-7B-02 OF THE STATE FINANCE AND
32 PROCUREMENT ARTICLE.

33 [(g)] ~~(I)~~ (H) "Program" means the Rural Legacy Program established by this
34 subtitle.

1 [(h)] ~~(H)~~ (I) "Rural Legacy Area" means a region within or outside a
 2 metropolitan area designated by the Board as rich in a multiple of agricultural,
 3 forestry, natural, and cultural resources.

4 [(i)] ~~(K)~~ (J) "Rural Legacy Plan" means a plan accepted by the Board for
 5 acquisition of easements and fee interests in Rural Legacy Areas.

6 [(j)] ~~(L)~~ (K) "Sponsor" means a local government, group of local
 7 governments, or a land trust.

8 ~~(M) "TRANSFER OF DEVELOPMENT RIGHTS PROGRAM" MEANS A PROGRAM
 9 ESTABLISHED TO RELOCATE DEVELOPMENT FROM NONPRIORITY FUNDING AREAS
 10 TO A PRIORITY FUNDING AREA THROUGH THE USE OF BONUS DENSITY AND OTHER
 11 PROVISIONS THAT WOULD ALLOW DEVELOPMENT IN THE PRIORITY FUNDING AREA
 12 AT A HIGHER DENSITY THAN USUALLY PERMITTED IN THE AREA.~~

13 5-9A-03.

14 (a) There is a Rural Legacy Board established in the Department of Natural
 15 Resources to administer the Rural Legacy Program.

16 (b) The Board consists of the following members:

17 (1) The Secretary of Agriculture;

18 (2) The Secretary of Natural Resources; and

19 (3) The Director of the Office of Planning.

20 (c) The Secretary of Natural Resources shall serve as Chairman of the Board.

21 (d) (1) The Department of Natural Resources shall provide staff to the
 22 Board.

23 (2) The Department of Agriculture and the Office of Planning may
 24 provide additional staff.

25 5-9A-04.

26 (a) The Board has and may exercise all powers necessary to carry out the
 27 purposes of this subtitle, ~~INCLUDING THE AUTHORITY TO PURCHASE, HOLD, AND
 28 SELL TRANSFERABLE DEVELOPMENT RIGHTS AND TO USE THE PROCEEDS FROM
 29 THE SALE OF TRANSFERABLE DEVELOPMENT RIGHTS CONSISTENT WITH THIS
 30 SUBTITLE.~~

31 (b) (1) The Board may adopt regulations to implement the purposes of this
 32 subtitle, including procedures for expediting acquisitions AND PURCHASING AND
 33 SELLING TRANSFERABLE DEVELOPMENT RIGHTS AND USING THE PROCEEDS
 34 RELATED TO PURCHASING AND SELLING TRANSFERABLE DEVELOPMENT RIGHTS IN
 35 ACCORDANCE WITH THIS SUBTITLE AND LOCAL LAW.

1 (2) The authority granted under this subsection may not be construed to
2 permit adoption of a regulation applicable to land that is not subject to an easement
3 under this subtitle.

4 (c) (1) The Board shall establish a method for appraisal of real property
5 interests acquired under this subtitle.

6 (2) Any method for appraisal established by the Board may not include a
7 value for any resource used or reserved by the owner for private economic benefit.

8 (d) The Board and sponsors may enter into agreements with other
9 governmental agencies, including the Maryland Agricultural Land Preservation
10 Foundation and the Maryland Environmental Trust, for the purpose of establishing
11 partnerships to carry out this Program.

12 5-9A-05.

13 (a) A sponsor may file an application to designate a Rural Legacy Area in
14 accordance with a schedule established by the Board. A local government may not
15 apply for or approve an application for a Rural Legacy Area designation inside
16 another jurisdiction's boundaries without that jurisdiction's approval.

17 (b) The application shall describe the proposed Rural Legacy Area, include a
18 Rural Legacy Area Plan, identify existing protected lands, state the anticipated level
19 of initial landowner participation in the Program and the amount of the grant
20 requested, and comply with the criteria set forth below.

21 (c) The Board shall evaluate and compare applications in accordance with the
22 following criteria in order to select those that best carry forward the goals and
23 objectives of the Program set forth in § 5-9A-01 of this subtitle:

24 (1) The significance of the agricultural, forestry, and natural resources
25 proposed for protection, including:

26 (i) The degree to which proposed fee or easement purchases will
27 protect the location, proximity, and size of contiguous blocks of lands, green belts or
28 greenways, or agricultural, forestry, or natural resource corridors;

29 (ii) The nature, size, and importance of the land area to be
30 protected, such as farmland, forests, wetlands, wildlife habitat and plant species,
31 vegetative buffers, or bay or waterfront access; and

32 (iii) The quality and public or economic value of the land;

33 (2) The degree of threat to the resources and character of the area
34 proposed for preservation, as reflected by patterns and trends of development and
35 landscape modifications in and surrounding the proposed Rural Legacy Area;

1 (3) The significance and extent of the cultural resources proposed for
2 protection through fee simple purchases, including the importance of historic sites
3 and significant archaeological areas;

4 (4) The economic value of the resource-based industries or services
5 proposed for protection through land conservation, such as agriculture, forestry,
6 recreation, and tourism;

7 (5) The overall quality and completeness of the Rural Legacy Plan,
8 including:

9 (i) The degree to which existing planning, zoning, and growth
10 management policies contribute to land conservation and the protection of cultural
11 resources;

12 (ii) The degree to which the proposed plan is consistent with the
13 applicable local comprehensive plan, including protection of sensitive areas and
14 mineral resources;

15 (iii) How well existing or new conservation programs are
16 coordinated with the proposed acquisition plan;

17 (iv) How well the plan will maximize acquisition of real property
18 interests in contiguous blocks of land within the Rural Legacy Area while providing
19 for protection of isolated acquisitions important to the plan;

20 (v) Provisions for protection of resources, such as voluntarily
21 granted or purchased easements, ~~EFFECTIVE MARKETING OF LOCAL GOVERNMENT~~
22 ~~TRANSFERABLE DEVELOPMENT RIGHTS PROGRAMS~~, fee estate purchases, or gifts of
23 lands;

24 (vi) How the sponsor plans to manage, prioritize, and sequence
25 easement and land acquisitions;

26 (vii) Methodology for prioritizing and valuing or appraising
27 easements;

28 (viii) Proposed titleholders for easement or fee estate acquisitions;
29 and

30 (ix) The quality of the proposed stewardship program for holding
31 and monitoring of easement restrictions in perpetuity;

32 (6) The strength and quality of partnerships created for land
33 conservation among federal, State, and local governments and land trusts for
34 implementing the plan, including:

35 (i) Financial support;

36 (ii) Dedication of staff and resources; and

- 1 (iii) Commitment to and development of local land conservation
2 policies, such as changes in zoning and use of transferable development rights;
- 3 (7) The extent to which federal or other grant programs will serve as a
4 funding match; and
- 5 (8) A sponsor's ability to carry out the proposed Rural Legacy Plan and
6 the goals and objectives of the Program.
- 7 (d) The Board:
- 8 (1) Shall review applications and may request additional information
9 from a sponsor;
- 10 (2) Shall submit applications to appropriate State agencies and to the
11 advisory committee established by this subtitle and consider any recommendations
12 made regarding the applications; and
- 13 (3) May negotiate the terms of an application and proposed Rural Legacy
14 Area and plan with a sponsor.
- 15 (e) (1) A sponsor shall assure adequate public participation in the
16 development of an application and provide the Board with a summary of that
17 participation.
- 18 (2) (i) If an application proposes a Rural Legacy Area be located
19 within 1 mile of the boundary of a municipal corporation, the municipal corporation
20 shall have 45 days to review and comment on the application before the application is
21 submitted to the Board.
- 22 (ii) The sponsor shall submit to the Board with the completed
23 application a summary of the comments from the municipal corporation.
- 24 (f) (1) A land trust shall consult with a local government prior to filing an
25 application.
- 26 (2) The Board may not approve or amend an application without local
27 government approval.
- 28 (g) The right of public access may not be required under a conservation
29 easement.
- 30 (h) A land trust may not hold exclusive title to real property interests acquired
31 under this subtitle.
- 32 (i) An easement acquired under this subtitle is perpetual and may not be
33 extinguished or released.
- 34 (j) (1) ¶With the approval of a landowner, funds under this Program may be
35 used to purchase a development right as part of an easement or fee estate acquisition.

1 A development right shall be held by the titleholder and the Board and may be sold
2 only within the same jurisdiction pursuant to local law.}

3 ~~(1) FUNDS UNDER THE PROGRAM MAY BE USED TO PURCHASE A~~
4 ~~DEVELOPMENT RIGHT AS PART OF AN EASEMENT OR FEE ESTATE ACQUISITION.~~

5 ~~(2) A DEVELOPMENT RIGHT MAY BE SEVERED FROM A PROPERTY AND~~
6 ~~TRANSFERRED FROM ONE AREA TO PROPERTY IN A RECEIVING AREA IN~~
7 ~~ACCORDANCE WITH LOCAL LAW.~~

8 (2) IN A COUNTY WITH A LOCALLY ADOPTED TRANSFERABLE
9 DEVELOPMENT RIGHTS PROGRAM AND WITH THE APPROVAL OF THE COUNTY,
10 FUNDS UNDER THIS PROGRAM MAY BE USED TO PURCHASE TRANSFERABLE
11 DEVELOPMENT RIGHTS IN THE COUNTY IN ACCORDANCE WITH THE LOCALLY
12 ADOPTED TRANSFERABLE DEVELOPMENT RIGHTS PROGRAM.

13 ~~(3) (1) A DEVELOPMENT RIGHT THAT IS PURCHASED UNDER THE~~
14 ~~PROGRAM SHALL BE HELD BY THE TITLEHOLDER AND THE BOARD WITH THE OPTION~~
15 ~~FOR RESALE UNDER A TRANSFER OF DEVELOPMENT RIGHTS PROGRAM.~~

16 ~~(4)~~ (3) THE RIGHT TO RESELL THE DEVELOPMENT RIGHT SHALL
17 BE STATED IN THE INSTRUMENT OF PURCHASE.

18 (4) THE RURAL LEGACY BOARD SHALL MAINTAIN RECORDS
19 CONCERNING:

20 (I) REAL PROPERTY FROM WHICH TRANSFERABLE DEVELOPMENT
21 RIGHTS ARE PURCHASED; AND

22 (II) REAL PROPERTY TO WHICH RIGHTS ARE RESOLD AND
23 TRANSFERRED.

24 (5) THE COUNTY SHALL PROVIDE TO THE BOARD INFORMATION
25 RELATING TO THE RECORDS REQUIRED IN PARAGRAPH (4) OF THIS SUBSECTION.

26 ~~(5)~~ (6) TRANSFERABLE DEVELOPMENT RIGHTS MAY BE RESOLD ONLY
27 TO OWNERS OR OPTION PURCHASERS OF REAL PROPERTY LOCATED IN PRIORITY
28 FUNDING AREAS, INCLUDING MUNICIPALITIES, WITHIN THE COUNTY IN WHICH THE
29 RIGHTS WERE PURCHASED.

30 ~~(6)~~ (7) (I) ~~THE BOARD SHALL DISTRIBUTE THE PROCEEDS~~
31 ~~ASSOCIATED WITH THE RESALE OF TRANSFERABLE DEVELOPMENT RIGHTS SHALL~~
32 ~~BE DISTRIBUTED ONLY AS DESCRIBED IN THIS PARAGRAPH.~~

33 (II) FIFTY PERCENT OF THE PROCEEDS SHALL BE USED BY THE
34 ~~PRINCIPAL LOCAL GOVERNMENT IN WHICH THE PRIORITY FUNDING AREA~~
35 DEVELOPMENT USING TRANSFERABLE DEVELOPMENT RIGHTS IS LOCATED TO FUND
36 LOCAL CAPITAL PROJECTS IN THE IMMEDIATE NEIGHBORHOOD COUNTY OR
37 MUNICIPAL CORPORATION WHICH IS RECEIVING TRANSFERABLE DEVELOPMENT
38 RIGHTS. FUNDS SHALL BE DISTRIBUTED TO THE MUNICIPAL CORPORATION IF THE

1 RECEIVING AREA IS WITHIN THE CORPORATE LIMITS OF A MUNICIPAL
 2 CORPORATION.

3 (III) FIFTY PERCENT OF THE PROCEEDS SHALL BE RETURNED TO
 4 THE RURAL LEGACY PROGRAM FOR USE IN THE COUNTY IN WHICH THE PROCEEDS
 5 WERE GENERATED.

6 (IV) PROCEEDS MAY NOT BE USED FOR OPERATING EXPENSES.

7 (k) All easement acquisitions must be recorded among the land records where
 8 the real property is located.

9 (l) State or local condemnation authority may not be used to acquire real
 10 property interests under this Program.

11 (m) Funds may be used for the protection of historic sites or significant
 12 archeological areas that otherwise meet the goals of this Program only if the sponsor
 13 is acquiring real property interests through a fee simple purchase.

14 (n) A land or mineral owner who participates in this Program may reserve
 15 mineral rights for extraction in accordance with applicable law and the terms of the
 16 easement or fee acquisition.

17 (O) IN ITS DETERMINATION UNDER SUBSECTION (C) OF THIS SECTION, THE
 18 RURAL LEGACY BOARD MAY NOT MAKE ITS DETERMINATION SOLELY ON THE BASIS
 19 OF WHETHER A COUNTY HAS ADOPTED A TRANSFERABLE DEVELOPMENT RIGHTS
 20 PROGRAM AUTHORIZING RURAL LEGACY BOARD PURCHASES AND SALES OF
 21 TRANSFERABLE DEVELOPMENT RIGHTS.

22 SECTION 2. AND BE IT FURTHER ENACTED, That the Economic Growth,
 23 Resource Protection, and Planning Commission and the State Office of Planning, in
 24 consultation with county planning departments, shall report to the House
 25 Environmental Matters, House Appropriations, Senate Economic and Environmental
 26 Affairs, and Senate Budget and Taxation Committees, and the Governor on or before
 27 December 15, 2000, on the following:

28 (1) Types of locally adopted transferable development rights programs,
 29 including characteristics of sending and receiving areas, and county planning
 30 department assessments of the potential effect of authorizing Rural Legacy Board
 31 purchases and resales of transferable development rights;

32 (2) The estimated economic costs and benefits of Rural Legacy Program
 33 purchases and resales of transferable development rights for:

34 (i) county transferable development rights programs; and

35 (ii) landowners participating in the Rural Legacy Program and
 36 other State and local land preservation programs; and

1 (3) The projected impacts of Rural Legacy Program transferable
2 development rights purchases and resales on the Program; and

3 (4) Public input on the estimated impacts of Rural Legacy Program
4 purchases and resales of transferable development rights.

5 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
6 effect ~~October 1, 2000~~ January 1, 2001.